IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1233 OF 2005

1. Cipla Employees Union)
102, Anand Shraddha,)
Friend's Colony, Bhandup (East),)
Mumbai - 400 042)
)
2. Pius Varghese)
General Secretary, Cipla)
Employees Union, Friend's Colony,)
Bhandup (East), Mumbai 400042)
)
3. Arun Velaskar ,)
Joint Secretary, Cipla)
Employees Union, residing at)
8-A, Dilip Niwas, Datta Nagar,)
Dombivli (East), Dist: Thane.) .....Petitioners.

V/s

1. Cipla Limited)
289, Belassis Road,)
Mumbai Central, Mumbai -)
400 008.)
)

2. A.V. Kutumbe,)
Factory Manager,)
Cipla Limited, L.B.S. Marg,)
Vikhroli (W), Mumbai 400 083) .....Respondents.

Mr. R.D. Bhat for the Petitioner.

Mr. C.U. Singh with Mr. Mahesh Londhe i/b M/s. Sanjay Udeshi & Co. for Respondent No.1.

CORAM: V.M. KANADE, J.

DATE : 12TH APRIL, 2007

ORAL JUDGMENT:

1. Heard the learned Counsel appearing on behalf of the Petitioner and the learned Counsel appearing on behalf of Respondent No.1.

2. By this Petition, Petitioners are seeking following reliefs.

> "(a) That this Honourable Court be pleased to issue a writ of certiorari or any other writ, order or direction in the nature of certiorari calling for the records and proceedings leading to impugned

award dated 18.8.2004 in Complaint (IT) No. 4 of 1999 in Reference (IT) No. 43 of 1999 and after considering legality, validity and justifiability of the impugned award to set aside the same (at marked Ex. 'K')

(b) For cost of the petition.

(c) For such other and further reliefs or directions as the nature and circumstances of the case may require."

3. In this Petition, Petitioner No.2 made an application that his name be deleted from the array of Petitioners and, therefore, by order dated 13/09/2005, his name was removed from the array of parties. The Petition, therefore, is contested by the Petitioner No.1 - Union and the Petitioner No.3 - Arun Velaskar.

FACTS:

4. Brief facts are as under:-

5. Respondent No.1 - Company is engaged in

manufacturing and marketing of pharmaceuticals products. The Petitioner No.1 is the Union which is registered as a recognized Union for the establishment of Respondent No.1 - Company. The Petitioner No.3 was elected as Joint Secretary in 1995. It is the case of Petitioner No.3 that, after that, he was elected as Joint Secretary of the Union. Various complaints of unfair labour practice had arisen and there were number of industrial disputes between the period 1994-95 to 2002. The Union also has raised charter of demands and the matter was referred for adjudication by the Commissioner of Labour, Maharashtra and it was numbered as Reference (IT) No. 43 of 1999.

6. In view of the strained relations between the Union and the Company, the Petitioner No.1 - Union wrote to the Respondent No.1 - Company every year recommending the names of office bearers of the Union to be recognized as protected workmen. Accordingly, in the year 1998, the Union sent a letter to the Company dated 03/03/1998 requesting the Company to recognize Petitioner No.3 and other office bearers as protected workmen. On 28/08/1998,

since there was no response from the Company, the Union took up the matter before the Conciliation Officer. On 13/07/1999, the Conciliation Officer informed the Union that the Company had no objection for recommending the names forwarded by the Union as protected workmen. During the intervening period, on 08/03/1999, the Petitioner No.3 was suspended and on 26/03/1999 a charge-sheet was issued against Petitioner No.3 and on 06/08/1999, the Petitioner No.3 was dismissed from service. It is an admitted position that during that time, a Reference (IT) No. 43 of 1999 was pending before the Tribunal.

7. The Union, again on 03/04/1999, recommended 15 names of office bearers for declaring them as protected workmen for three establishments of the Company i.e. five each at Mumbai Central, Vikhroli and Patalganga. On 19/04/1999, the workmen from Mumbai Central Factory were transferred to Vikhroli and, as a result, there were no workmen at Mumbai Central. The Union then approached the Conciliation Officer. However, the Conciliation Officer rejected the request of the Union dated 03/04/1999.

8. Being aggrieved by the said decision of the Conciliation Officer, the Union filed a Writ Petition in this Court vide Writ Petition no. 442 of 2000 and by order dated 08/03/2000, the matter was remanded to the Conciliation Officer to decide the same on the basis of letter dated 03/04/1999.

9. By order dated 14/03/2000, the Conciliation Officer refused to declare the Petitioner No.3 as a protected workman on the ground that he was dismissed on 06/08/1999. Against this order, a Writ Petition was preferred in this Court vide Writ Petition No.1202 of 2000. This Petition, however, was dismissed in limine by the learned Single Judge of this Court by order dated 19/06/2000. The Union challenged the order passed by the learned Single Judge before the Division Bench. The Division Bench, however, dismissed the appeal which was filed by the Union and confirmed the order which was passed by the learned Single Judge who had confirmed the order passed by the Conciliation Officer. The Division Bench in para 3 of the said order has observed as under:-

> "3. Perused the impugned order passed by the learned Single Judge on 19th June 2000 declining to entertain the Writ Petition. We have also perused the order dated 14th March 2000 passed by Asst. Labour Commissioner and Conciliation Officer, wherein in paragraph nos. 8 and 12, it is clearly mentioned that three of the workmen who have already been dismissed could not have been declared as protected workmen and excluding whose three persons, three other workmen can be accepted as protected workmen. It appears that the respondent no.4 had no objection to the names of Deepak Katekar and Ahantaram Mahadik to be declared as protected workmen. Today, we are in the year 2002 and these declarations are sought on a year to year basis. We do not find anything arbitrary or perverse in the aforesaid order dated 14th March, 2000."

10. Thereafter, the Petitioners filed a complaint being Complaint (IT) No.4 of 1999 under the provisions of section 33A of the Industrial Disputes Act, 1947 before the Industrial Tribunal before whom the Reference (IT) No. 43 of 1999 was

pending. It was contended in the said complaint that, as on the date of dismissal i.e. On 06/08/1999, the Petitioner No.3 was a protected workman by virtue of the order of the Conciliation Officer dated 13/07/1999, the Respondent No.1 was under a statutory obligation to obtain written prior permission from the Tribunal before dismissing Petitioner No.3. By order dated 18/08/2004, the Industrial Tribunal dismissed the complaint (IT) No. 4 of 1999 in Reference (IT) No. 43 of 1999. The Petitioners, being aggrieved by the aforesaid order have filed this Petition under Article 226 and 227 of the Constitution of India.

SUBMISSIONS:

11. The learned Counsel appearing on behalf of the Petitioners submitted that Petitioner No.3 was dismissed on 06/08/1999 and the order had been passed by the Conciliation Officer on 13/07/1999 informing the Union that the Company had no objection for recommending the persons mentioned in the said application as protected workmen. He submitted that though the said order had been passed in respect of the earlier year, protection that was afforded by virtue of the said order would operate for a

period of one year from the date on which the protection was granted by the Conciliation Officer. He submitted that, therefore, the Petitioner No.3 having been declared as protected workman under the provisions of section 33 on 13/07/1999, the Respondent No.1 - Company could not have terminated his services without obtaining prior permission as contemplated under the provisions of section 33 of the said Act. He invited my attention to the provisions of section 33, Rule 66 of the Industrial Disputes (Bombay) Rules, 1957 [For short “Bombay Rules”] as also Industrial Disputes (Central) Rules, 1957 [For short “Central Rules”] which were framed under the provisions of the said Act. He submitted that though the order which was passed by the Conciliation Officer dated 14/03/2000 whereby he had refused to declare the Petitioner No.3 as a protected workman, was in respect of new elections which were held in 1999, yet, since protection was already afforded by virtue of the order dated 13/07/1999, the Petitioner No.3 continued to be a protected workman as per the provisions of the said Act and Rules framed thereunder. He submitted that, therefore, merely because for the subsequent year the application for

protection was not granted by the Conciliation Officer and the Writ Petition filed by the Petitioners before the learned Single Judge was dismissed and appeal also was dismissed by the Division Bench, it would not obliterate the effect of the protection which was granted by the Conciliation Officer on 13/07/1999. He submitted that the complaint has been filed under section 33A and the Tribunal, therefore, had jurisdiction to entertain the said complaint and decide the issue whether the Management could have terminated the services of Petitioner No.3 when he was already declared as a protected workman. Since there was a breach of provisions of section 33, the Tribunal ought to have set aside the order of termination and should have allowed the complaint filed by the Petitioners. In support of the said submissions, he relied on the two judgments of this Court; one in the case of The Maharashtra State Road Transport Corporation, Akola Vs. The Conciliation Officer & Ors reported in **1993 II CLR 1065** and other in the case of Air India Ltd. Vs. Indian Pilots Guild and another, reported in **2005(1) Mh.L.J. 850.**

12. The learned Counsel appearing on behalf of Respondent No.1, on the other hand, submitted that the provisions of section 33 and more particularly the provision of definition of “protected workman” clearly stipulated that the term “protected workman” had to be construed after taking into consideration the Rules which were framed under the said Act. He, therefore, invited my attention to the explanation which was given to section 33 sub-clause (3) of the said Act. He submitted the Bombay Rules did not lay down any prescribed period for the purpose of granting protection after the order was passed by the Conciliation Officer and merely the procedure was prescribed under the Rules. He submitted that, in the present case, the Bombay Rules were applicable to the facts of the present case. He further submitted that under the Central Rules, reference had been made as to when the application had to be filed, seeking a declaration from the Conciliation Officer. He submitted that the ratio of the judgments on which the reliance was placed by the learned Counsel appearing on behalf of the Petitioners was not applicable to the facts of the present case. He submitted that, even otherwise, it was not open for

the Petitioners to file a reference under section 33A directly particularly when the issue as to whether the Petitioner No.3 was a protected workman or not for the year 1999 was already concluded by the Division Bench of this Court. He submitted that it was not open, therefore, for the Petitioners to file a reference under section 33A.

FINDINGS AND CONCLUSION:

13. In order to appreciate the rival contentions, it will be essential to take into consideration the relevant provisions. Section 33 lays down that during the pendency of proceedings before various authorities, the conditions of service of the workman would remain unchanged under certain circumstances. In the present case, we are concerned with the provisions of sub-clause (3) of section 33 which seeks to give protection to a protected workman and the employer is prohibited from taking any action against such protected workman during the pendency of any dispute without taking express permission in writing of the authority before which the proceeding is pending. Sub clause (3) of

section 33 reads as under:-

> "33. Conditions of service etc. to remain unchanged under certain circumstances during pendency of proceedings.-
> (1) .....
> (2) .....
> (3) Notwithstanding anything contained in sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute-
>
> (a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceeding; or
>
> (b) by discharging or punishing, whether by
>
> dismissal or otherwise, such protected workman,
>
> save with the express permission in writing of the authority before which the proceeding is pending.
>
> *Explanation.*- For the purposes of this sub-

> section a "protected workman", in relation to an establishment, means a workman who, being [a member of the executive or other office-bearer] of a registered trade union connected with the establishment, is recognized as such in accordance with rules made in this behalf.

From the explanation to sub-clause (3), it is clear that the term "protected workman" has been defined as a workman who is a member of the executive or other officer of a recognized trade union connected with the establishment and is recognized as a protected workman in accordance with the Rules made in this behalf. Therefore, the procedure for the purpose of declaring a person as protected workman has been laid down in the Rules. In this context, therefore, it would be relevant to take into consideration the relevant Rules which, in this case are Bombay Rules. Rule 66 of the Bombay Rules lays down the provision for the purpose of recommending a workman as a protected workman which reads as under:-

> "66. *Protected workmen* (1) Every trade union

connected with an industrial establishment to which the Act applies, shall communicate to the employer, before the 30th September every year, the names and addresses of such of the officers of the trade union who are employed in that establishment and who, in the opinion of the trade union, should be recognised as protected workmen. Any change in the incumbency of any such officer shall be communicated to the employer by the trade union within fifteen days of such change.

(2) The employer shall, subject to the provisions of sub-section (4) of section 33, recognise such workmen to be protected workmen for the purposes of sub-section (3) of the said section and communicate to the union, in writing, within fifteen days of the receipt of the names and addresses under sub-rule (1), the list of workmen recognized as protected workmen.

(3) Where the total number of names received by the employer, under sub-rule (1) exceeds the maximum number of protected workmen admissible for the

establishment under sub-section (4) of section 33, the employer shall recognize as protected workmen only such maximum number of workmen :

Provided that, where there is more than one trade union in the establishment, the maximum number shall be so distributed by the employer among the unions, that the numbers of recognised protected workmen in individual unions bear roughly the same proportion to one another as the membership figures of the unions. The employer shall in that case intimate in writing to the President or the Secretary of each union the number of protected workmen allotted to it :

Provided further, where the number of protected workmen allotted to a union under this sub-rule falls short of the number of officers of the union seeking protection, the union shall be entitled to select the officers to be recognised as protected workmen. Such selection shall be made by the union and communicated to the employer within five days of the receipt of the employer's letter.

> (4) When a dispute arises between an employer and any trade union in any matter connected with the recognition of protected workmen under this rule, dispute shall be referred to the Conciliation Officer concerned, whose decision thereon shall be final."

The rule, therefore, provides that the Union should before 30th September every year communicate the names and addresses of such Officers of the trade union to the employer, who, in the opinion of the trade union, are to be recognized as protected workmen. The employer is then supposed to recognize such workmen to be protected workmen and communicate this fact to the Union in writing within 15 days from the receipt of the communication from the Union. Sub-clause (2) provides that if the employer does not accept the the list which is given by the Union then the dispute has to be referred to the Conciliation Officer. It would also be relevant to take into consideration Central Rules though the said Rules are not applicable to the facts of the present case. Rule 61 of the Central Rules lays down

the procedure for the purpose of declaring a workman as a protected workman. Rule 61 reads as under:-

> "61. **Protected workmen.-**(1) Every registered trade union connected with an industrial establishment, to which the Act applies, shall communicate to the employer before the [30th April] every year, the names and addresses of such of the officers of the union who are employed in that establishment and who, in the opinion of the union should be recognised as "protected workmen". Any change in the incumbency of any such officer shall be communicated to the employer by the union within fifteen days of such change.
>
> (2) The employer shall, subject to section 33, sub-section (4), recognise such workmen to be "protected workmen" for the purposes of sub-section (3) of the said section and communicate to the union, in writing, within fifteen days of the receipt of the names and addresses under sub-rule (1), the list of workmen recognised as protected workmen [for the period of twelve months from the date of such

communication].

(3) Where the total number of names received by the employer under sub-rule (1) exceeds the maximum number of protected workmen, admissible for the establishment, under section 33, sub-section (4), the employer shall recognise as protected workmen only such maximum number of workmen:

Provided that where there is more than one registered trade union in the establishment, the maximum number shall be so distributed by the employer among the unions that the numbers of recognised protected workmen in individual unions bear roughly the same proportion to one another as the membership figures of the unions. The employer shall in that case intimate in writing to the President or the Secretary of the Union the number of protected workmen allotted to it :

Provided further that where the number of protected workmen allotted to a union under this sub-rule falls short of the number of officers of the union seeking

protection, the union shall be entitled to select the officers to be recognised as protected workmen. Such selection shall be made by the union and communicated to the employer within five days of the receipt of the employer's letter.

(4) When a dispute arises between an employer and any registered trade union in any matter connected with the recognition of 'protected workmen' under this rule, the dispute shall be referred to the [any Regional] Labour Commissioner (Central) or] Assistant Labour Commissioner (Central) concerned, whose decision thereon shall be final.

14. It has to be noted that though sub-clause 2 of Rule 61 of the Central Rules mentions the period for which the workman is supposed to be protected, such provision is not found in the Bombay Rules. Sub-clause (2) to Rule 61 of the Central Rules states as under:-

"61. .....
.....

> (2) .....the list of workmen recognised as protected workmen [for the period of twelve months from the date of such communication]"

This particular provision is not found in the Bombay Rules.

15. Two questions, therefore, which fall for consideration before this Court are (i) whether this is a fit case for interfering with the impugned order which is passed by the Tribunal and (ii) whether the period of protection which is granted to protected workmen under the provisions of section 33 sub-clause (3) read with Rule 66 of the Industrial Disputes (Bombay) Rules, 1957 is to be calculated from the date of communication of the order either by the employer or the Conciliation Officer for a period of one year thereafter and, if it is so held, then whether the workman, in the present case, was a protected workman under the aforesaid provisions.

16. In the present case, the facts disclose that for the year 1998, the Union had sent communication to the Company on

03/03/1998, requesting the Company to recognize a set of five workmen amongst which the Petitioner No.3 was one of them. It appears that on 25/09/1998 a joint meeting was called by the Conciliation Officer and on the same date the Company had given its intimation to the Conciliation Officer accepting the list of those five workmen as protected workmen. Thereafter, the Conciliation Officer heard the matter on number of dates and, finally, on 13/07/1999, informed the Union about the acceptance of the list which was sent to the Company on 25/09/1998. Two facts emerged from this particular chronology of events. In the first place, the recognition which was granted to the set of five workmen was for the year 1998. Though the Conciliation Officer had communicated to the Union on 13/07/1999 that the Company had no objection to the said list, the Company, in fact, had given its no objection on 25/09/1998. The protection, therefore, which was given to the set of five workmen, obviously, was for the elections which were held in the year 1998. It cannot, therefore, be said that the protection would continue after term of the election for the year 1998 had expired, as, after the expiry of the said term,

new elections would be held and, therefore, in all probability, new set of office bearers would be elected though it was possible that some of the members who were office bearers in the earlier year could continue in the next year. Therefore, the protection which was afforded was clearly for the said year 1998 and it could not, by any stretch of imagination, be extended to the next year.

17. Another aspect which has to be taken into consideration is that after the elections were held in February, 1999 the Union had again recommended 15 names of office bearers for declaring them as protected workmen and since the Company did not accept these names, the matter was referred to the Conciliation Officer who had refused to declare the Petitioner No.3 as a protected workman by his order dated 14/03/2000 on the ground that the Petitioner No.3 was already dismissed on 06/08/1999. This order was confirmed by the learned Single Judge of this Court and the Division Bench in appeal also further confirmed the order of the Conciliation Officer. The Division Bench in terms has made observation in para 3 of its order which has been

reproduced in para 9 of this judgment, wherein the Division Bench has observed that since the Petitioner No.3 was already dismissed from service on 06/08/1999, he could not be declared as a protected workman. In view of this factual position, it would be difficult for me to now go behind the order passed by the Division Bench of this Court and declare that the Petitioner No.3 was a protected workman on the basis of the order which was passed by the Conciliation Officer on 13/07/1999 which was obviously for the earlier year. In view of the peculiar facts of this case, therefore, the submissions which are made by the learned Counsel appearing on behalf of the Petitioners cannot be accepted. Therefore, in my view, this is not a fit case for interfering with the impugned award passed by the Industrial Tribunal. Therefore, for the same reasons, the ratio of the judgments in the case of Maharashtra State Road Transport Corporation, Akola (supra) and in the case of Air India Ltd. (supra) on which the reliance is placed by the learned Counsel for the Petitioner will not apply to the facts of the present case.

18. In view of this, in my view, it is not necessary to decide

the second question which has been framed by me and in an appropriate case the said question will have to be decided.

19. In the result, Writ Petition is dismissed. Rule is discharged. Under the circumstances, there shall be no order as to costs.

(V.M. KANADE, J.)